

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Inquiry Concerning High-Speed)	GN Docket No. 00-185
Access to the Internet Over)	
Cable and Other Facilities)	
)	

**REPLY COMMENTS OF
THE AMERICAN AUTOMOBILE ASSOCIATION**

TABLE OF CONTENTS

	<u>Page</u>
I. Introduction and Background on AAA.....	4
II. Telematics Industry Background	6
A. Telematics Technology Promotes Safety	7
B. The Nascent Telematics Industry is Rapidly Expanding.....	8
C. The Telematics Industry is Becoming Consolidated	9
D. The Telematics Industry Should Employ Open Access and Open Architecture	10
III. The FCC Should Act to Ensure Consumer Choice in the Telematics Industry	12
A. The FCC Has Acted to Ensure Consumer Choice in Other Analogous Markets.....	15
B. Regulatory Action to Ensure Consumer Choice in the Telematics Industry is in the Public Interest	21
C. The FCC Has Jurisdiction Over the Telematics Industry.....	25
D. The FCC Should Include Telematics in any Future Open Access Rulemaking.....	27
IV. Conclusion	29

EXECUTIVE SUMMARY

Telematics -- the integration of location technology and wireless communications to provide a variety of automotive and mobile applications -- has turned the automobile into a communications platform offering consumers a variety of safety, security, productivity, convenience, and entertainment services. Because consumers currently have no choice among the service providers delivering or poised to deliver these services, there is a need for regulatory action to guarantee open access in the telematics market.

Opening the telematics market to competition will offer numerous benefits to consumers, including improved emergency services, lower costs, and greater flexibility. A recent survey indicates that consumers seek four characteristics in a telematics device: reasonable pricing, flexibility in the hardware they select, privacy of their personal information, and the freedom to choose their service provider. Opening telematics platforms will serve to advance these benefits, increasing the likelihood of success in this promising new market.

In the Wireless Communications and Public Safety Act of 1999 (the "E-911 Act"), Congress directed the Commission to assist in the development and implementation of new automotive safety systems, and to solicit input from automobile consumer groups with respect to such new technology. Congress recognized that the convergence of communication and information technology would make possible advanced safety devices in automobiles, and instructed the FCC to become involved in the development of these systems. Telematics integrates

conventional wireless technology, high-speed mobile connections to the Internet, global positioning systems and other technology to produce devices capable of providing unparalleled safety and convenience to consumers. This new technology thus falls squarely within the ambit of the E-911 Act, and the FCC thus has a heightened obligation to ensure that the deployment of telematics serves the public interest.

At its core, the open access NOI asks whether the Commission should regulate the market for broadband Internet services to guarantee consumer choice of service providers. In addition, the Commission asks whether the legal framework it establishes should apply to other technologies "including those that employ wireless, satellite, broadcast, and unlicensed spectrum technologies." There is a need for open access in the market for telematics in its nascent stage, because without regulatory action competition will be stifled and consumers will not be able to choose among underlying service providers on the telematics platform.

As new communications technologies have developed, the Commission has often taken action when market forces have not been sufficient to guarantee consumers a choice among service providers. The need for such regulatory action typically develops because of the relationship between the entity that controls the end user equipment or the lines of communication and the entity that provides the communication service. When such conditions exist, the Commission has often implemented rules to promote competition and guarantee consumer choice.

AAA believes strongly in the general principle that American consumers should have the freedom to choose among various service providers, whether at home, in the office, or in their cars. AAA therefore requests that the Commission include the provision of telematics services in its open access rulemaking, or in the E-911 Implementation Proceeding.

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Inquiry Concerning High-Speed)	GN Docket No. 00-185
Access to the Internet Over)	
Cable and Other Facilities)	
)	

To: The Commission

**REPLY COMMENTS OF
THE AMERICAN AUTOMOBILE ASSOCIATION**

The American Automobile Association ("AAA") hereby submits reply comments in response to the *Notice of Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities* (the "NOI"), FCC 00-355, released by the Federal Communications Commission (the "FCC" or the "Commission") on September 28, 2000. In the *NOI*, the Commission sought comment on whether it should establish a national policy with respect to the treatment of high-speed services, and how it can best promote the goals of widespread and rapid deployment of high-speed services while at the same time preserving and promoting the current vibrant and competitive free market. 1/ In addition, the Commission asked whether the legal framework it establishes should apply to other technologies "including those that employ wireless, satellite, broadcast, and unlicensed spectrum

technologies." ^{2/}

AAA welcomes the opportunity to address the need for regulatory action to guarantee open access in a specific market segment -- the integration of location technology and wireless communications to provide a variety of automotive and mobile applications ("telematics"). While AAA takes no position on the imposition of mandatory open access requirements in the delivery of high-speed Internet services over cable systems, AAA believes strongly in the general principle that consumers should have the freedom to choose among various service providers, whether at home, in the office, or in their cars. Telematics has turned the automobile into a communications platform offering wireless, Internet, entertainment, and emergency services, yet consumers currently have no choice among the underlying service providers other than by purchasing a particular vehicle brand. AAA therefore requests that the Commission include the provision of telematics services in its open access rulemaking.

In the Wireless Communications and Public Safety Act of 1999 (the "E-911 Act"),^{3/} Congress directed the Commission to assist in the development and implementation of new automotive safety systems, and to solicit input from

^{1/} NOI at ¶ 2.

^{2/} *Id.* at ¶ 44.

^{3/} Wireless Communications and Public Safety Act of 1999, Pub. L. No. 106-81, enacted Oct. 26, 1999, 113 Stat. 1286, amending the Communications Act of 1934, 47 U.S.C. §§ 222, 251.

automobile consumer groups with respect to such new technology. ^{4/} In the legislative history of the E-911 Act, Congress recognized that the convergence of communication and information technology would make possible advanced safety devices in automobiles, and instructed the FCC to become involved in the development of these systems. ^{5/} Telematics integrates conventional wireless technology, high-speed mobile connections to the Internet, global positioning systems and other technology to produce devices capable of providing unparalleled safety and convenience to consumers. Therefore, this new technology falls well within the scope of the E-911 Act.

Given this congressional mandate and the importance of preserving the consumer's ability to choose from a variety of telematics service options, the Commission should include telematics as a part of the open access proceeding or open a new proceeding to address these concerns. AAA is also submitting these comments as an *ex-parte* filing in the combined proceeding concerning *The Use of N11 Codes and Other Abbreviated Dialing Arrangements, Third Notice of Proposed*

^{4/} H.R. Rep. No. 106-25 (1999) ("[Coordinated efforts are necessary] for E911, as well as for follow-on technologies such as Automatic Crash Notification, intelligent transportation systems, and similar efforts. The legislation requires the Commission to encourage and assist the States in developing and implementing end-to-end systems, and consult with . . . a variety of other stakeholders [including] . . . automobile consumer groups. The Committee believes that the best way to enhance public safety by deploying these new technologies is to involve all the key stakeholders in overall planning and keep them involved as the technologies are implemented. . . . Integrating intelligent transportation technologies and emergency communications should reduce the costs of both in saving lives, reducing injuries, and improving the efficiency of our nation's highways.").

^{5/} *Id.*

Rulemaking, CC Docket No. 92-105, and *Implementation of 911 Act, Notice of Proposed Rulemaking*, WT Docket No. 00-110 (the "E-911 Implementation Proceeding"). [6/](#)

I. INTRODUCTION AND BACKGROUND ON AAA

AAA is a not-for-profit federation of 82 automobile clubs and full-service travel agencies serving more than 43 million members in the United States and Canada. Each AAA club is chartered under individual state laws, with size varying among clubs. A core package of services is provided to members, including emergency road service, travel related services, auto-travel assistance and member publications.

AAA is synonymous with emergency road service for its members. Twenty-four hours a day, seven days a week, AAA clubs respond to more than 30 million emergency road service calls each year. AAA's emergency road service includes towing, flat tire service, battery boosts, lockout service, emergency re-fueling and more. In addition, AAA coordinates with local law enforcement and state highway patrols in dispatching emergency vehicles to clear accident scenes. During national disasters, such as earthquakes, fires, blizzards, hurricanes, ice storms and floods, AAA dispatches contractors and fleets where help is needed.

While AAA's member service offerings have evolved and expanded over its

[6/](#) Comments in this proceeding were due on October 16, 2000 and reply comments on

100-year history, AAA's absolute commitment to providing safety, security and peace of mind to AAA members and the traveling public is unwavering. As AAA enters the 21st century, and begins its second century of service, AAA is faced with a changing landscape requiring innovative solutions to enhance its ability to appropriately and effectively serve the expanding needs of its members. In fact, last year AAA formed Response Services Center, LLC, a new company designed to provide AAA with the ability to deliver leading-edge, wireless mobile emergency assistance and travel information through telematics. High-speed mobile connections to the Internet, global positioning systems and other broadband technology are integrating with vehicles to produce telematics – a word that did not exist until just a few years ago, but a phenomenon that will revolutionize automobile use.

AAA supports the development and implementation of telematics as an effective means for providing safety and security for travelers. The delivery of telematics involving vehicle location devices today is provided predominantly by original equipment manufacturers ("OEMs"). ^{7/} The future, however, may be quite different as wireless devices converge with global positioning technology to provide mobile as well fixed, in-vehicle service.

AAA believes that consumers must have the freedom to select their service

November 15, 2000.

^{7/} For the purposes of these comments, OEM refers to automobile manufacturers.

provider – regardless of the device or equipment through which the service is provided. Open access will foster healthy competition among service providers resulting in improved applications, greater efficiencies, and higher quality products and services, all of which will ultimately benefit the safety and security of the user.

The telematics market is analogous to the delivery of high speed Internet service over cable systems. Without open access, consumers have no choice in Internet service providers ("ISPs") over their cable system. In order to obtain cable modem service, subscribers must contract with their monopoly cable provider, which controls the system hardware and may contract with only a single ISP to provide service to its customers. Thus, by controlling the hardware, the cable service provider can deny consumers the right to choose among various ISPs. Similarly, with telematics products such as GM OnStar, the hardware manufacturer contracts with a particular service provider or is the provider itself, thus denying consumers the right to choose their own provider.

II. TELEMATICS INDUSTRY BACKGROUND

Telematics is the integration of location technology and wireless communications to provide security services, personalized information, messaging, and entertainment for automotive and pedestrian applications. As described by industry observer Elliott Hamilton in a recent Information Week article, "[c]ars in the near future will be a communications platform offering wireless, Internet, and

entertainment services representing a transformation from comfortable transport." ^{8/} Initial telematics service offerings are focused on safety and security. These services include E-911, airbag deployment notification, stolen vehicle tracking, remote door unlock, emergency roadside assistance and more. ^{9/}

A successful telematics offering requires many vital components to be brought together in a functional manner. These components include hardware platforms, service providers and content providers. Hardware platforms may include in-vehicle devices, cell phones or personal digital assistants ("PDAs"). Service and content providers may include companies such as AAA, Disney, Yahoo!, Sprint PCS and more. At this nascent stage, there are numerous ways to assemble a successfully integrated telematics system, and the optimal solution for today's technology may change over time as mobile technology develops and converges.

A. Telematics Technology Promotes Safety

Telematics will provide opportunities to improve emergency response time and to increase the efficiency of emergency vehicles. Precise location detail will reduce the amount of time that emergency vehicles now spend searching for callers with ambiguous locations. Most important, this improved response time is expected to lead to improved survivability rates for those involved in accidents or otherwise

^{8/} Bob Wallace, *Cars Will Let Motorists Drive And Surf -- Auto Industry Is Betting Drivers Will Want Hands-Free Phones And Wireless Internet Access*, INFORMATION WEEK, January 09, 2001 ("Wallace Article").

requiring emergency care. Automatic crash notification systems that notify call centers of an apparent accident based upon air bag deployment will enable rapid emergency response even when victims themselves cannot call for assistance.

There is also a tremendous safety benefit in removing stranded or damaged automobiles from roadways more quickly. Disabled automobiles cause traffic congestion and often lead to subsequent chain reaction accidents, which can cause serious injury or death to stranded motorists. Telematics will increase the response time in removing disabled automobiles from streets and highways, thus improving the safety and efficiency of America's roadways.

Telematics will offer numerous other safety benefits. From its many years of experience in delivering assistance to motorists, AAA has responded to calls involving young children locked in cars, disoriented elderly motorists, heart attack victims unable to leave their automobiles, drivers who become lost in snowstorms, and motorists who have been carjacked. By offering simple one-touch operations and location monitoring, telematics devices offer the potential to deliver superior service to motorists in such crisis situations.

B. The Nascent Telematics Industry is Rapidly Expanding

Recent forecasts from industry analysts predict that telematics subscribers will increase from less than a million today, to more than 17 million in 2005. Over

9/ See description of the evolution of telematics services at Exhibit A.

the same time period, revenues are estimated to grow to more than \$13 billion, with continued growth to almost \$28 billion by 2007. General Motors is signing up 1,500 telematics subscribers a day, with the goal of 4 million subscribers by 2003. [10/](#) Some are predicting that 84% of new cars sold in 2005 will have telematics technology available. [11/](#)

The impact that emerging wireless Internet services, including telematics, could have on the marketplace may well exceed that of the wired Internet. This new technology promises in-car technology that can summon 911 service, emergency road service, unlock car doors, diagnose mechanical problems, help select destinations, provide route guidance and advice on what to see, where to eat and stay, etc.

The same functionality will be available via portable devices such as cell phones and PDAs. In the near future, Internet services will likely converge with telematics services.

C. The Telematics Industry is Becoming Consolidated

Telematics partnerships and alliances are forming quickly as companies realize that no single entity can deliver all the components required to provide a successful offering. Automobile manufacturers are joining forces with wireless service providers and content providers to implement telematics technology.

[10/](#) *Wallace Article.*

Several companies have identified telematics as an avenue to build loyalty with their customers and to receive recurring revenues related to the automobile and other mobile devices. In all cases, these companies have allied or developed supplier relationships with other companies to provide a comprehensive telematics solution. For example, General Motors has formed relationships with Motorola for hardware, AOL for content and convenience services, XM Radio for satellite radio, and Verizon for wireless communication.

Unfortunately, these alliances threaten to keep important players out of the emerging market for telematics services. Currently, exclusive contracts lock the automobile consumer into one equipment manufacturer, one wireless carrier, one content provider, and one provider of emergency road service. Further, closed architectures in telematics equipment limit consumers' access to alternative service providers. These exclusive contracts and closed architectures eliminate competition in the telematics marketplace and prevent consumers from choosing a service provider.

D. The Telematics Industry Should Employ Open Access and Open Architecture

Delivery of telematics involving vehicle location devices is provided predominantly by OEMs today. The delivery of telematics in the future, however, may be quite different as wireless devices converge with global positioning

11/ *Id.*

technology to provide mobile as well as fixed, in-vehicle service.

OEMs have the ability to rapidly assemble and deploy a large number of telematics devices and therefore exercise complete control over the automobile's electrical system. This allows OEMs to interface devices and enables functions such as remote door unlocking, air bag deployment notification, car tracking and remote diagnosis. This also allows OEMs to fully control the user's access to the underlying service and content providers, however, leaving the consumer with no control over these technology and service provider decisions. Consumers are left with few options from which to choose in the marketplace.

Wireless service providers ("WSPs") are also viewed as key players in telematics services. Wireless phones have already penetrated a broad segment of the general population, so it is likely that WSPs will choose to upgrade their handsets and services to allow widespread use of GPS-enabled, wireless Internet technology. Furthermore, beginning in October 2001 the FCC will require WSPs to be able to provide the location of most cell phone users to the designated public safety answering point. [12/](#) This location information must be accurate to within

[12/](#) *In the Matter of Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 18676, 3 CR 967 (1996) ("E-911 First Report and Order"); Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Third Report and Order, 14 FCC Rcd 17388, 17 CR 739, 64 FR 60126 (1999) ("E-911 Third Report and Order").*

50 meters in the majority of situations. ^{13/} This requirement virtually ensures that WSPs will be active in the telematics market.

AAA supports telematics as an efficient means for providing safety and security for travelers, but believes consumers must have the freedom to select their own service providers -- regardless of the device or equipment through which the service is provided. Open access will foster healthy competition among service providers, resulting in improved applications, greater efficiencies, and higher quality products and services, all of which benefit the ultimate user.

III. THE FCC SHOULD ACT TO ENSURE CONSUMER CHOICE IN THE TELEMATICS INDUSTRY

Where market forces have not succeeded in providing consumer choice, government action may be necessary. In the past, the FCC has often taken action to ensure that consumers have the freedom to choose between competing telecommunications service providers. As indicated above, consumers are currently locked into a single telematics service provider at the point when they purchase their automobiles. Purchasing a new automobile in order to change providers is a substantial financial hurdle to the consumer. This indicates a failure of market

^{13/} Initially, the Commission required wireless service providers to provide location information within 125 meters. *E-911 First Report and Order*. In September 1999, the Commission revised its enhanced 911 rules to require carriers to provide the location 911 calls with the following accuracy and reliability: (1) for network-based technologies: 100 meters for 67 percent of calls, 300 meters for 95 percent of calls; (2) for handset-based technologies: 50 meters for 67 percent of calls, 150 meters for 95 percent of calls. *E-911*

forces to provide adequate competition and consumer choice. The FCC should act to foster open telematics platforms and prohibit exclusive contracts with underlying service providers, thus permitting consumers to select from a range of available service providers.

At its core, the NOI asks whether the Commission should regulate the market for broadband Internet services to guarantee consumer choice of service providers. In addition, the Commission asks whether the legal framework it establishes should apply to other technologies "including those that employ wireless, satellite, broadcast, and unlicensed spectrum technologies." [14/](#) The market for telematics is closely parallel to the cable modem market because without regulatory action, telematics providers will continue to demonstrate preferential treatment for exclusive underlying service providers, thus stifling competition and denying consumer choice.

Telematics technology of the future will integrate wireless Internet access as a part of the range of services available to automobile consumers. In the near future, Internet service providers ("ISPs") will seek to provide important services to consumers through telematics devices. (For a description of some of the services that will be delivered through telematics devices, see the Speech of Robert L. Darbelnet, President and CEO of AAA, attached hereto as Exhibit B). AAA is

Third Report and Order.

[14/](#) *Id.* at ¶ 44.

concerned that these arrangements may take the form of exclusive agreements with a single service provider, including an ISP. Unfortunately, this would deny consumers the freedom to choose their own service provider to serve the telematics device. Given the important public safety implications of telematics service, the FCC must take action to guarantee open access in order to ensure that consumers have complete freedom to choose among ISPs and other telematics service providers. AAA encourages the Commission to take action to promote competition by requiring open access in a wide range of telecommunications markets, including the growing telematics market.

Congress has expressed its concern that, although deaths from motor vehicle crashes have been declining in recent years, deaths at the scene prior to receiving emergency medical care have doubled in the past 20 years to more than 20,000 per year. ^{15/} Both Congress and the Commission have stressed the importance of improving the emergency response of the communications systems available to motorists. ^{16/} Where an issue as important as the public safety on America's roadways is at stake, the Commission should act to ensure that telematics devices are capable of delivering to consumers the best service possible.

^{15/} H.R. Rep. No. 106-25, at 5 (1999); see also *Implementation of 911 Act, Notice of Proposed Rulemaking*, FCC 00-327, at ¶ 5 (2000).

^{16/} *Id.*

A. The FCC Has Acted to Ensure Consumer Choice in Other Analogous Markets

As new communications technologies have developed, the Commission has often taken action when market forces have not been sufficient to guarantee consumers a choice among service providers. The need for such regulatory action typically develops when a contractual arrangement or attributable business interest exists between the entity that controls the end user equipment or the lines of communication and the entity that provides the communication service. When such conditions exist, Congress, the Commission, and the courts have often implemented rules to promote competition and guarantee consumer choice.

Customer Premises Equipment (“CPE”). Competition in the telecommunications sector began in the 1950s through the introduction of CPE that supplemented or competed with the CPE supplied by the monopoly Bell system. The courts recognized that it made no sense to preclude the attachment of telephone equipment that was “privately beneficial without being publicly detrimental.” ^{17/} Subsequently, the Commission required telephone companies to allow subscribers to attach their own CPE and took other actions to ensure that consumers would have a choice among providers of CPE. ^{18/} The result was an

^{17/} *Hush-A-Phone v. United States*, 238 F.2d 266, 269 (D.C. Cir. 1956).

^{18/} *Use of the Carterfone Device in Message Toll Telephone Services*, 13 FCC 2d 420 (1968), *recon. denied*, 14 FCC 2d 571 (1968); *Proposals for New or Revised Classes of Interstate and Foreign MTS and WATS*, 56 FCC 2d 593 (1975) (adopting Part 68 of the FCC’s rules), *aff’d sub nom. North Carolina Utils. Comm’n v. FCC*, 552 F.2d 1036 (4th Cir. 1977).

explosive growth in the varieties of CPE, including fax machines, answering machines, modems, and many others.

Equal Access to Long Distance. To promote competition in the long distance industry, the consent decree breaking up the Bell system required the local operating companies to give their subscribers “equal access” to the long distance carrier of their choice. ^{19/} Congress later incorporated the equal access principle into the Telecommunications Act of 1996 (“1996 Act”). ^{20/} Long distance competition has resulted in manifest consumer benefits.

Local Telephone Competition. In the 1996 Act, Congress recognized that to give consumers choices among local telecommunications providers, it would be necessary to require incumbent carriers to open their ubiquitous networks to competitive local providers. The 1996 Act therefore requires incumbent local exchange carriers to interconnect with requesting carriers, offer unbundled network elements at cost-based prices, and make their retail services available on a discounted wholesale basis. ^{21/}

Pay Phone Long Distance. The Commission also acted to ensure that pay phone customers have a choice of long distance carriers. In implementing the

^{19/} *United States v. Western Electric Co.*, 552 F.Supp. 131 (D.D.C. 1982).

^{20/} Pub. L. No. 104-104, 110 Stat. 56 (1996). See, e.g., 47 U.S.C. § 251(b)(3).

^{21/} 47 U.S.C. §§ 251(c)(2), (3), and (4) and 252(d)(1), (2), and (3); *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 15499 (1996) (“*Local Competition Order*”), *aff’d in part and rev’d in part sub nom. Iowa Utilities Board v. FCC*, 120 F.3d 753 (8th Cir. 1997), *aff’d in part and rev’d in part sub nom. AT&T v.*

Telephone Operator Consumer Services Information Act of 1990, the Commission required that customers using pay phones provided by aggregators be permitted to “dial around” the long distance service chosen by the aggregator. ^{22/} The Commission continues to monitor various practices of pay phone aggregators, collecting information on the rates charged, costs incurred, services offered, and incidence of complaints.

Access to Public Utility Facilities. The Commission likewise acted to ensure that telecommunications service providers would be able to reach consumers by granting them access to utility poles, conduits and rights-of-way. In order to promote competition and expand consumer choices, Congress in the 1996 Act required that utilities open their facilities to telecommunications service providers. ^{23/} In implementing the 1996 Act, the Commission noted that there are situations in which a utility may have “the ability and the incentive to use its control over distribution facilities to its own competitive advantage,” ^{24/} and thus the Commission acted to guarantee telecommunications providers access to those

Iowa Utilities Board, 119 S.Ct. 721 (1999).

^{22/} *Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, Report and Order and Further Notice of Proposed Rule Making*, 69 RR 2d 900, 6 FCC Rcd 4736 (1991).

^{23/} 47 U.S.C. § 224. The 1996 Act, amending pole attachment rules implemented pursuant to the Pole Attachment Act of 1978, requires that “[a] utility shall provide a cable television system or any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it.” 47 USC § 224(f)(1). A utility may only deny access on a nondiscriminatory basis where there is “insufficient capacity and for reasons of safety, reliability and generally applicable engineering services.” *Id.* at §§ 224(a)(1) & (f)(2).

facilities. [25/](#)

Building Access. More recently, the Commission took further steps to promote competition and to guarantee that consumers would have freedom to choose among telecommunications service providers by granting competitive local communications providers access to inside wiring in multiple tenant environments. In its October 25, 2000 Report and Order, [26/](#) the Commission increased consumer choice by: (1) forbidding telecommunications carriers from entering into contracts to serve commercial properties that effectively restrict the property owner's ability to permit entry by other carriers, (2) requiring utilities to afford telecommunications carriers and cable service providers reasonable and nondiscriminatory access to conduits and rights-of-way located in customer buildings, and (3) prohibiting restrictions that impair the installation, maintenance or use of certain antennas used to receive and transmit telecommunications and other fixed wireless signals. [27/](#)

Cable Boxes. With respect to cable television set-top boxes, the Commission acted to require some degree of separation between equipment manufacturers and

[24/](#) *Local Competition Order*, 11 FCC Rcd at ¶ 1150.

[25/](#) The FCC rules implementing the mandatory access requirement in the 1996 Act were challenged by the electric utilities, but the 11th Circuit upheld the constitutionality of the rules. *Gulf Power Company v. U.S.*, 208 F.3d 1260 (11th Cir. 2000) (*Petition for Certiorari* filed Nov 22, 2000, No. 00-832).

[26/](#) *Promotion of Competitive Networks in Local Telecommunications Markets, First Report and Order and Notice of Proposed Rulemaking*, WT Docket No. 99-217, FCC 00-366 (released Oct. 25, 2000) ("*Competitive Networks*").

service providers to ensure that consumers would have a choice in equipment vendors. In implementing Section 629 of the 1996 Act, the Commission indicated that its goal was to "maximize consumer choice and flexibility."^{28/} The Commission cited the legislative history of that Section, in which Congress stated that "consumers will benefit from having more choices among telecommunications subscription services arriving by various distribution sources."^{29/}

Program Access. In another move to ensure consumer choice, the Commission required providers of satellite-delivered programming that are affiliated with a cable operator to make their programming available to unaffiliated service providers on a nondiscriminatory basis.^{30/} In implementing the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"), the Commission sought to prevent, among other things, exclusive contracts between content providers and cable operators, who control the distribution technology. The Commission indicated that the goal of the regulation was to increase competition and diversity in the multichannel video programming market and to increase the availability of programming to consumers.

Cellular Interoperability. At the inception of the cellular telephone

^{27/} *Id.*

^{28/} *Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices*, Report and Order, 13 FCC Rcd 14775 (1998).

^{29/} *Id.*, citing H.R. Rep. No. 104-204, 104th Cong., 1st Sess. 112 (1995).

^{30/} *Implementation of Sections 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992*, 72 RR 2d 649, 8 FCC Rcd 3359 (1993).

industry, the Commission mandated interoperability requirements to ensure that all cellular equipment would be compatible and that customers would be able to choose among service providers. ^{31/} The Commission left the development of specific compatibility standards to industry standards organizations, but mandated interoperability of equipment to guarantee consumers the freedom to choose a service provider. ^{32/} In imposing this requirement, the Commission recognized the importance of acting during the early stages of technological development to ensure consumer choice.

Satellite Digital Audio Radio Service. A particularly interesting analogy is the development of Satellite Digital Audio Radio Service ("SDARS"). The FCC granted licenses to two satellite service providers, but indicated concern that each licensee might develop proprietary broadcasting protocols and receiver design. In order to ensure that consumers who purchase SDARS receivers would have the freedom to choose between the service providers, the Commission required receiver and system interoperability. ^{33/} The Commission said, "[w]e believe that, at the

^{31/} See *An Inquiry Into the Use of the Bands 825-845 MHz and 870-890 MHz for Cellular Communications Systems*, 49 RR 2d 809, 86 FCC 2d 469 (1981); see also 47 C.F.R. § 22.915 ("Cellular systems must be capable of providing service using the types of modulation described in the cellular system compatibility specification").

^{32/} *Id.*; See also *Implementation of Sections 3(n) and 332 of the Communications Act Regulatory Treatment of Mobile Services, Further Notice of Proposed Rulemaking*, 9 FCC Rcd 2863, at ¶ 56 (1994) ("These rules were designed to protect cellular customers against incompatible equipment and to ensure that customers would have the ability to "roam" from one licensee's service area to another").

^{33/} *Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band, Report and Order, Memorandum Opinion and Order and*

very least, consumers should be able to access the services from all licensed satellite DARS systems and our rule on receiver interoperability accomplishes this." [34/](#) The FCC explained that among the reasons for mandated interoperability were lower equipment costs for consumers and an increased chance that the service will succeed in the marketplace. [35/](#)

In each of these examples -- cellular interoperability; pay telephone long distance access; access to utility poles, conduits, and rights of way; building inside wiring access; cable set top box design; and SDARS -- the Commission recognized a potential for market domination and took action. In such cases, the Commission has rightly recognized the importance of competition and took the appropriate steps to guarantee consumers the freedom to choose.

B. Regulatory Action to Ensure Consumer Choice in the Telematics Industry is in the Public Interest

As described by AAA President and CEO Robert L. Darbelnet in his recent speech before the Transportation Research Board, [36/](#) recent surveys indicate that consumers want four characteristics in a telematics device: reasonable pricing, flexibility in the hardware they select, privacy of their personal information, and the freedom to choose their service provider. Consumers will only purchase

Further Notice of Proposed Rulemaking, 6 CR 978, 12 FCC Rcd 5754, 62 FR 11083, 62 FR 19095, at ¶¶ 102-107 (1997).

[34/](#) *Id.* at ¶ 106.

[35/](#) *Id.*

telematics at a fair price. Consumers also demand the ability to trade up, upgrade, or change out their equipment to keep up with the latest product advancements. Likewise, consumers are concerned about privacy because they are frightened by the thought that someone may have the ability to track their location at any given moment. Finally, consumers want to be free to choose who responds to them during emergencies and how operators or call center staff manage those calls. In order for telematics to be a success, these four consumer demands must be addressed.

In the telematics industry, consumer choice is threatened by the existence of a closed architecture and by exclusive contracts between equipment manufacturers and service providers. In some cases, closed architectures and exclusive contracts can be good for consumers. However, in many cases, they can stifle competition.

The Commission provided an economic analysis of exclusive contracts in the

Competitive Networks proceeding:

In general, such arrangements can be either beneficial or harmful to the public interest, depending on the precise environment in which they occur. . . . One finding of the economic literature, however, is that vertically related firms may enter into long term or exclusive contracts that inefficiently deter or foreclose entry to a market and thus harm consumers.³⁷

With respect to access to inside wiring by competitive networks, the Commission

^{36/} A copy of the speech is attached hereto as Exhibit B.

³⁷ *Competitive Networks* at ¶22, citing Jean Tirole, *The Theory of Industrial Organization*, Chapter 4, at 187-198 (1997); Aghion, P. & Bolton, P., “Contracts as Barriers to Entry,” 77 *American Economic Review*, No. 3, 388-401 (June 1987).

found exclusive contracts to be harmful primarily because the exclusive contracts "erect[ed] a barrier preventing other telecommunications firms from offering service" to consumers. ^{38/} Likewise, in the telematics industry, consumers are harmed by exclusive contracts between automobile manufacturers and service providers because those contracts create a real barrier preventing consumers from accessing other service providers.

AAA is the industry leader in providing roadside assistance. Congress has explicitly recognized AAA's vital role in this regard. ^{39/} The Commission has indicated that AAA's safety-related communications are very serious and directly impact the overall public welfare, noting that "[t]he communications necessary to effect the prompt clearing of the highways must be clearly and rapidly conveyed, because delay can result in serious injury or death to motorists if the vehicles remain in place." ^{40/} Satisfaction with AAA's provision of fast and affordable emergency road service is evident in the more than 90% renewal rate of its members.

Opening the telematics market so that consumers may choose among many

^{38/} *Competitive Networks* at ¶23.

^{39/} *Replacement of Part 90 By Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them and Examination of Exclusivity and Frequency Assignment Policies of the Private Land Mobile Services, Second Memorandum Opinion & Order*, PR Docket No. 92-235, FCC 99-68 (1999) ("In the 1997 Budget Act, Congress created a separate category for not-for-profit organizations that offer emergency road services and exempted that category from spectrum auctions.").

^{40/} *Id.* at ¶ 16.

service providers will lead to competition and ultimately to better service. As the national leader in rendering critical roadside assistance, it is only logical that AAA should be permitted to compete in this market on a level playing field. The provision of superior service is particularly critical for roadside assistance, since the lives of travelers on the public roadways may be at stake.

Congress and the Commission have recognized the importance of communications systems in promoting safety on the roadways in the development of the wireless E-911 system. ^{41/} In drafting that legislation, Congress explicitly noted the importance of communications systems in preventing highway deaths through their ability to notify emergency service providers quickly. ^{42/} Congress and the Commission found that the market had not succeeded in providing a sufficient E-911 system, and took action to require a more comprehensive system. ^{43/} Telematics devices will also provide an important component of this public safety system in the future. Given the importance of communications systems, including telematics, in ensuring safety on America's roadways, it is vital that the Commission ensure that telematics can offer the best quality of service possible.

Opening the telematics market to competition will also drive down prices for

^{41/} See E-911 Act; *Implementation of 911 Act, Notice of Proposed Rulemaking*, FCC 00-327 (2000).

^{42/} *Id.*

^{43/} *Id.*

consumers. Particularly where public safety is a concern, telematics should not be a technology available only to the wealthiest consumers. In the current market, telematics devices are available primarily in high-end automobiles, and thus are effectively unavailable for middle and lower income consumers. Permitting exclusive contracts and closed architectures to continue in the telematics industry will keep the prices of telematics service artificially high. Opening the market to competition will lead to lower prices, thus permitting a broader group of consumers to benefit from the technology.

The lack of competition in the telematics market will also slow the advancement of telematics equipment and services. It is critical that the telematics market be opened to competition at an early stage, when the contours of the technology are still undefined, in order to speed the cycle of innovation. It is important to note that because telematics devices are anchored in the automobiles in which they are sold, consumers will be locked into the existing telematics technology for five to ten years after the date of manufacture – the natural lifetime of an automobile.

C. The FCC Has Jurisdiction Over the Telematics Industry

The FCC has jurisdiction over the telematics industry due to its jurisdiction over the communications carriers used to provide telematics services. Most telematics technologies currently in use rely on either wireless or satellite services,

both of which require FCC licenses. As a part of its jurisdiction over these licensees, the Commission has the authority and the obligation to ensure that the licenses are used in the public interest. [44/](#) Further, to the extent that the services are delivered by a common carrier, Section 201(b) of the Act gives the Commission authority to declare any unreasonable practices of a carrier to be unlawful. [45/](#)

In addition to its direct jurisdiction over the licensees, the Commission has ancillary jurisdiction over the telematics industry under sections 1 and 4(i) of the Communications Act. The Supreme Court and the D.C. Circuit have upheld the Commission's exercise of ancillary jurisdiction where Congress has not expressly addressed the Commission's duties with respect to the regulated area at issue. [46/](#) The Commission has often extended its ancillary jurisdiction over the manufacture or distribution of equipment used in conjunction with communication services. For example, the Commission has asserted its ancillary jurisdiction over the marketing of customer premises telephone equipment. [47/](#) More recently, it relied on ancillary jurisdiction to require manufacturers of equipment that perform voicemail and interactive menu services to ensure accessibility by persons with disabilities. [48/](#)

[44/](#) See generally 47 U.S.C. § 303.

[45/](#) 47 U.S.C. § 201(b). The Commission recently invoked its authority under § 201(b) to prohibit exclusive contracts in the *Competitive Networks* proceeding.

[46/](#) See, e.g., *United States v. Southwestern Cable Co.*, 392 U.S. 157, 178 (1968) (regulation of the cable television industry).

[47/](#) *Illinois Bell Telephone Company v. FCC*, 883 F.2d 104 (D.C. Cir. 1989).

[48/](#) *Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996; Access to Telecommunications Service*,

Similarly, in the telematics market the Commission could exercise its ancillary jurisdiction to require telematics equipment manufacturers to provide open access to various service providers.

In Section 1 of the Communications Act of 1934, as amended, Congress indicated that one of the goals for creating the Commission was "for the purpose of promoting safety of life and property through the use of wire and radio communication." ^{49/} Thus, promoting the safety of motorists who rely on telematics, a technology employing radio communications, for roadside assistance is among the essential goals of the Commission. Open access in the telematics context will promote public safety on America's roadways.

D. The FCC Should Include Telematics in any Future Open Access Rulemaking

Given the current lack of consumer choice in the telematics market, the Commission should, at a minimum, closely monitor the developments in the telematics industry. AAA suggests that the current market conditions indicate a need for action by the Commission, and given the similarities between the broadband Internet market and the telematics market, AAA requests that the Commission address the issue as a part of the anticipated Notice of Proposed Rule

Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities, Report and Order and Further Notice of Inquiry, 17 CR 837, 64 FR 63235, 64 FR 63277 (1999).

^{49/} 47 U.S.C. § 151 (2000).

Making in this proceeding.

In the alternative, AAA requests that the Commission incorporate issues raised by telematics technology within its E-911 Implementation Proceeding. Should the Commission choose not to address the issue in either of these ongoing proceedings, AAA respectfully requests that the Commission open a separate inquiry to address the lack of competition in the telematics market.

IV. CONCLUSION

For the foregoing reasons, AAA believes that the Commission should monitor the telematics industry and take action to ensure that consumers have the freedom to choose their service provider. In that regard, AAA requests that the Commission include telematics technology when it issues a Notice of Proposed Rulemaking in this proceeding. In addition, AAA requests that these comments be treated as an *ex parte* filing in the E-911 Implementation Proceeding, and requests that the Commission consider including telematics technology in that proceeding.

Respectfully submitted,

American Automobile Association

By: _____
Michele C. Farquhar
David K. McGraw
Angela E. Giancarlo

HOGAN & HARTSON L.L.P.
555 13th Street, N.W.
Washington, DC 20004-1109

Its Attorneys

Dated: January 10, 2001

EXHIBIT A

EXHIBIT B